

**THE STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 11-250

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Investigation of Merrimack Station Scrubber Project and Cost Recovery

**Objection to Public Service Company of New Hampshire's Data Requests and
Motion to Direct PSNH to Submit Reasonable Number of Requests**

NOW COMES TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast Inc. (together, "TransCanada") pursuant to Admin. Rule Puc 203.09(g) and objects to Public Service Company of New Hampshire's ("PSNH") data requests propounded on TransCanada in this docket on January 16, 2014 and moves the Commission to require PSNH to limit and resubmit its data requests or establish a mechanism for reviewing and limiting the data requests. TransCanada respectfully files this general objection as well as certain specific objections noted in more detail below. TransCanada is taking these steps to preserve its objections notwithstanding the fact that it is working diligently to compile certain responses under potentially very tight time constraints (i.e., 10 days). As part of its motion, TransCanada is requesting the Commission to require PSNH to limit and resubmit its data requests or establish a mechanism for reviewing and limiting the data requests. In support of this Objection and Motion TransCanada states as follows:

1. On January 16, 2014 PSNH propounded 176 data requests on TransCanada. Many of the data requests individually contain multiple parts and accordingly the total number is in excess of 425.

2. Puc 203.09(g) requires that in the absence of a contrary Commission order objections to data requests be made within 10 days of receiving the data request. When the Commission established a schedule for the remainder of this docket in its letter of November 15, 2013, objections *and* responses to data requests were due on the same date, a date which was later changed to February 4, 2014. Out of an abundance of caution TransCanada is submitting this objection within 10 days of receiving the data requests from PSNH.¹

3. TransCanada submits that the data requests it received from PSNH are subject to a number of different objections and that it will take some time to sort through each specific question. Overall, given the fact that this case is about PSNH's prudence related to a specific investment in a specific and narrow geographic region and market, not TransCanada's activities or investments in the same region or approximately 3,000 miles away, TransCanada submits that the PSNH data requests on their face are overly burdensome, broad and constitute harassment because of their sheer number, scope and extraneous subject matter. TransCanada hereby supports and incorporates the arguments presented in the Objection by the Office of Consumer Advocate to the Excessive Data Requests of Public Service Company of New Hampshire to OCA Expert

¹ When the Commission changed the schedule in response to PSNH's request it was silent on the issue of whether objections would also be due on February 4, 2014 (i.e., the same date as responses) or whether objections would be due within 10 days of receipt. See Commission letters of December 30, 2013 and January 9, 2014.

Witnesses and Motion to Direct PSNH Resubmit a Reasonable Number of Requests
dated January 22, 2014.

4. While the Commission has a fairly liberal standard when it comes to discovery, PSNH should not be allowed to ask an unbridled number of data requests about issues of little or no relevance to the docket. See *Re Investigation into Whether Certain Calls are Local*, 86 NH PUC 167, 168-169 (2001) (where the Commission, based on a recommendation from Staff, required answers to some but not all discovery questions, following an analysis that denied questions that were too narrow or too broad because they were “not relevant to the policy aspect of the docket.”) See also *Re Lower Bartlett Water Precinct*, 85 NH PUC 371, 372 (2000) (where the Commission denied certain data requests saying it does so when it “can perceive of no circumstance in which the requested data would be relevant”). In analyzing a motion to compel, for example, the Commission will “balance[] such factors as the relevancy of the requested information, the effort needed to gather it, the availability of the information from other sources, and any other relevant criteria.” *Re Public Service Company of New Hampshire*, 76 NH PUC 559, 561 (1991); see also *Public Service Company of New Hampshire*, Order No. 25,595 (Docket DE 13-108), 2013 WL 6328136 (Nov. 15, 2013) (stating that “we also consider whether the response would be unduly burdensome for the respondent to compile and whether the information is otherwise publicly available” and finding that certain requests by the Conservation Law Foundation would be burdensome and would require PSNH to “create information logs and files not maintained by the Company in its normal course of business”).

5. In addition, as stated in the OCA's Objection and Motion, New Hampshire Superior Court rules allow for only 25 interrogatories, and count each question as one interrogatory. This Commission follows essentially the same discovery standard as the Superior Court, *i.e.* information that is relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence. There is no reason that PSNH should be permitted to ask TransCanada more than 425 requests when the Superior Court rules would permit only 25.

6. PSNH's data requests are a blatant attempt to shift the focus away from where it belongs in this docket, which is whether PSNH "has exhibited inefficiency, improvidence, economic waste, abuse of discretion, or action inimical to the public interest". *Re Public Service Company of New Hampshire*, 81 NH PUC 531, 541 (1996) (citing *Appeal of Seacoast Anti-Pollution League*, 125 N.H. 708 (1985)); *see also Appeal of Easton*, 125 N.H. 205, 215 (1984); *Re Public Service Company of New Hampshire*, 87 NH PUC 876, 886 (2002). It is "the Commission's responsibility and obligation under the law ...to determine whether PSNH conducted itself with the level of care expected of **highly trained specialists...**" *Public Service Company of New Hampshire*, 87 NH PUC 876, 886 (2002) (Emphasis added).

7. Most of PSNH's data requests are subject to objection on one or more of the following grounds:

- the requests are not reasonably calculated to lead to the discovery of information that is admissible in this proceeding;
- the requests are overly broad and unduly burdensome. Given the scope of TransCanada's parent and affiliates' North American operations the

information would be unduly burdensome to compile and produce; it would also have no application to PSNH's narrow geographic region and market;

- PSNH seeks information that is readily available from publicly available sources and they ask TransCanada to conduct research for them;
- PSNH seeks confidential and proprietary information from entities that are not a party to the case;
- PSNH seeks confidential and proprietary information protected under RSA 91-A:5 and Commission rules and precedent;
- the questions are unnecessarily argumentative;
- PSNH seeks information that is not related to any statements made in Mr. Hachey's testimony;
- the data requests are overly broad;
- the data requests seek legal conclusions;
- the data requests seek admissions;
- the data requests ask TransCanada to speculate;
- TransCanada's witness, Mr. Hachey, has no knowledge of the information being requested; TransCanada's witness, Mr. Hachey, is asked questions he may not even seek the answer to due to regulated codes of conduct that prevent him from having any access to or knowledge of the information being requested; and
- the requests seek information that is irrelevant to this proceeding, a proceeding to determine whether PSNH's actions with regard to a specific

investment in a scrubber project in a specific geographic region and market, were prudent.

8. TransCanada submits that for all of the reasons set forth above, the Commission should require PSNH to limit and resubmit its data requests, or, in the alternative, if the Commission desires to keep this docket on a reasonable schedule it should consider a mechanism for sorting through and limiting the PSNH data requests, such as appointing the Commission's General Counsel as hearing examiner to attend a conference of the parties to address any and all disputes regarding the data requests and to make a recommendation to the Commission, similar to how the Commission handled Mr. Long's deposition in this docket. See Order No. 25,566 in this docket. See also *Re Comcast Phone of New Hampshire dba Comcast Digital Phone*, 94 NH PUC 429, 432 (2009) (where the Commission appointed its General Counsel to act as hearing examiner for purposes of resolving discovery disputes); *Re Verizon New England, Inc.*, 92 NH PUC 41, 52 (2007) (where the Commission appointed the Director of its Legal Division to resolve discovery disputes); *Re City of Nashua*, 91 NH PUC 395, 396 (where the Commission designated a hearing examiner to hear the parties, report the facts and make recommendations to the Commission as to the disposition of a motion to compel). Further, it would be in the interest of justice and administrative efficiency to sustain this objection and grant this motion and the OCA's objection and motion.

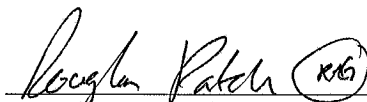
9. Without waiving these objections, TransCanada is in the process of compiling responses to certain information requests.

10. Counsel for TransCanada contacted PSNH counsel in an attempt to informally resolve this dispute to no avail.

WHEREFORE, TransCanada respectfully requests that this honorable
Commission:

- A. Require PSNH to limit and resubmit its data requests to TransCanada; and
- B. Grant such further relief as it deems appropriate.

Respectfully submitted,



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January 24, 2014

Certificate of Service

I hereby certify that on this 24th day of January, 2014 a copy of the foregoing
objection was sent by electronic mail to the Service List.



Douglas L. Patch

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